

AFTER PRISON: ROADBLOCKS TO REENTRY

A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS

What's the Law

STATE PROFILES > MASSACHUSETTS

ADOPTIVE AND FOSTER PARENTING

1. Does the state consider other criminal history records beyond the federal list of convictions barring people from becoming foster and/or adoptive parents?

Yes. For foster care, the state has mandatory, ten- and five-year presumptive, and discretionary bars based upon pending cases and convictions for conspiracy to commit and the commission of other violent, sexual, theft-, and weapons-related offenses. Once the enumerated time period has elapsed for the ten- and five-year presumptive bars, the bar becomes discretionary. Mass. Regs. Code tit. 102, §§ 14.03 et seq. Yes. For adoption, applicants may be excluded based upon pending cases and convictions for conspiracy to commit and the commission of other violent, sexual, and theft- and weapons-related offenses. All adoption bars are discretionary. Mass. Regs. Code tit. 102, §§ 14.03 et seq.

2. Does the state restrict people from becoming foster and/or adoptive parents for longer than required by federal law?

Yes, for foster care. Because the statute is silent on the length of the mandatory and discretionary bars, they appear to operate as lifetime bars unless the state exercises its discretion. The presumptive bars also can operate as lifetime bars because they become discretionary after the specified time has elapsed. Mass. Regs. Code tit. 102, §§ 14.05, 14.20, and 14.23. Yes, for adoption. Because the statute is silent on the length of the discretionary bars they operate as lifetime bars unless the state exercises its discretion. Mass. Regs. Code tit. 102, §§ 14.03 et seq.

3. May applicants be barred by the convictions of other household members?

Yes, applicants for foster and adoptive parent licensure must be barred if other household members over the age of 17 years have convictions that would disqualify the applicant if s/he were the one convicted. Mass. Regs. Code tit. 102, § 14.05.

4. Does the state make individual determinations about an applicant's eligibility based on the criminal record?

Yes, for both foster care and adoption the following criteria must be considered in determining whether to lift a presumptive or discretionary bar: age of the conviction; applicant's age at time of offense; seriousness and circumstances of offense; relationship of offense to nature of work; number of offenses; rehabilitation and other relevant evidence. Mass. Regs. Code tit. 102, § 14.11.

ACCESS TO CRIMINAL RECORDS

1. Is there a time limit after which criminal history information is not reported to non-law enforcement entities for employment purposes?

Yes, public access to criminal offender record information (CORI) is limited to one year following release from custody or supervision for misdemeanor offenses, two years following release from custody or supervision for felony offenses, or three years following completion of a felony sentence in prison as a result of having been denied parole or having violated parole. Mass. Regs. Code tit. 803, §3.06.

2. Other than the subject and criminal justice agencies, who can obtain records?

The public has access to the conviction records of certain individuals. Statutorily authorized agencies have access to varying levels of CORI. Examples of such agencies include: the departments of youth and social services; housing authorities; the office of child care services; agencies for paternity, child support and domestic violence victim protection; and those performing program research. Mass. Regs. Code tit. 803, §3.03 and Mass. Gen. Laws Ann. Ch. 6, §§ 168, 172, 172B-172D, 172F and 173.

3. What types of records can be disclosed to non-criminal justice agencies?

Convictions are available to the public only if they meet the following criteria: • the individual was incarcerated; or • the underlying offense was punishable by five years or more of incarceration; and • not more than one year has elapsed since release from custody or supervision following a misdemeanor conviction, two years since a felony conviction, or three years following completion of a felony sentence in prison as a result of having been denied parole or having violated parole. Mass. Regs. Code tit. 803, § 3.06. Statutorily-authorized non-criminal justice agencies generally have access to all arrest and conviction information pertaining to offenses punishable by incarceration. Mass. Gen. Laws Ann. ch. 6, § 167. Other specific agencies are statutorily entitled to a broader range of records, including nongUILTY dispositions and/or juvenile and sealed records, e.g., the departments of youth and social services for evaluation of prospective foster and adoptive parents and the office of child services for evaluation of child care providers. Mass. Gen. Laws Ann. ch. 6, § 172F.

4. Are there penalties for violating limitations on dissemination?

Yes, civil and criminal. Mass. Gen. Laws Ann. ch. 6, § 177-78.

5. Are state criminal records available on the internet?

No.

6. Can state criminal records of arrests not leading to conviction be sealed (including expunged, erased, or purged)?

Not always, and never automatically. Two different processes apply depending on the disposition of the case:

Acquittal after trial:

While Mass. Gen. Laws Ann.Ch. 276, § 100C states that acquittals, no bills, and findings of no probable cause “shall” be sealed, Massachusetts’ Supreme Judicial Court has ruled that automatic sealing is unconstitutional where a person is acquitted by a judge or jury after trial. Accordingly, sealing can only take place after a different judge, in a new proceeding, determines after a hearing that there is “compelling state interest” based on the particular facts of the situation, which overcomes the First Amendment interest in keeping the record open.

Case nolle prossed and/or dismissed by the court without there having been any order of probation:

Mass. Gen. Laws Ann. Ch. 276, §100C states that the court will order sealing where “it appears that substantial justice would be served.” Sealing is not automatic: the affected person must petition the applicable court for sealing. There must

in fact be two hearings: the first at which the petitioner requests sealing and shows both that substantial justice will be served and that there is a compelling state interest in doing so, and, if the court agrees, a second hearing at which the prosecutor, probation office, alleged victim and others have a chance to contest the petition for sealing.

7. If so, what is the effect of having an arrest sealed?

An individual may deny the existence of the record if it has been sealed. Mass. Gen. Laws ch. 276, § 100C.

8. Can criminal conviction records be sealed (including expunged, erased, or purged)?

Yes, first-time misdemeanor records can be sealed 10 years following completion of sentence, court supervision, or probation and first-time felony records can be sealed 15 years following completion of sentence, court supervision, or probation if the person has not been found guilty of any criminal offense in any other state in the last 10 years. Mass. Gen. Laws ch. 276, § 100A. Criminal records for which an individual has been pardoned shall also be sealed. Mass. Gen. Laws ch. 127, § 152.

In addition, juvenile delinquency records can be sealed 3 years following completion of the disposition if the person has not been adjudicated delinquent or criminally convicted in the last 3 years, except for certain motor vehicle offenses. Mass. Gen. Laws ch. 276, § 100B.

9. If so, what is the effect of having a conviction sealed?

An individual may deny the existence of the adult conviction or juvenile delinquency record if it has been sealed. Mass. Gen. Laws ch. 276, § 100A.

DRIVERS' LICENSE PRIVILEGES

1. Does the state revoke or suspend the drivers' licenses of people convicted of drug-related offenses?

Yes, the state suspends drivers' licenses based upon drug-related offenses. Mass. Regs. Code tit. 540, § 20.03.

2. If so, what crime(s) result in suspension or revocation?

A range of violations of the Controlled Substances Act. Mass. Regs. Code tit. 540, § 20.03.

3. If so, what is the length of the suspension or revocation?

At least one year, and up to five years, depending upon the nature and number of convictions. Mass. Gen. Laws Ann. Ch.90, §22f and Ch.94C, and Mass. Regs. Code tit. 540, §20.03.

4. Does the state offer restricted drivers' licenses for purposes of employment, education, and/or medical care?

With evidence of severe hardship, individuals may apply for early reinstatement if certain criteria are met, e.g., fifty-percent of the suspension period has elapsed. Mass. Regs. Code tit. 540, § 20.03(3).

EMPLOYMENT

1. Can employers ask job applicants about arrests not leading to conviction?

No. Public and private employers and occupational licensing agencies are prohibited from asking about arrests not leading to conviction, as well as many misdemeanor convictions (including those that are more than 5 years old). Mass.

Regs. Code tit. 804, §§ 3.01 and 3.02.

2. Can employers consider arrests not leading to conviction?

No, employers are prohibited from basing any employment decision on such arrest information if they received it as part of a CORI check that they requested. Mass. Regs. Code tit. 804, § 3.01. However, if employers receive this information by other means, they may consider it.

3. Does the state have standards prohibiting employment discrimination by public employers and occupational licensing agencies based on a conviction record?

No.

4. Does the state have standards prohibiting employment discrimination by private employers based on a conviction record?

No.

5. Does the state restrict people with criminal records from employment in the field of home health care?

Home health aides are subject to background checks and barred from employment if suspended from the nurse aides' registry based upon an adjudicated finding of patient or resident abuse, mistreatment, neglect, or misappropriation of property. Notice and opportunity for a hearing is required following such a finding. Mass. Gen. Laws ch. 111, § 72J.

6. After an individual has been convicted, does the state offer any mechanism to demonstrate that an individual has been rehabilitated?

Upon the advice of the Board of Pardons, the governor may grant pardons and order the records of the pardoned offense sealed. An applicant may thereafter deny the existence of the record and employers and occupational licensing authorities are prohibited from disqualifying the applicant based upon the record. Mass. Gen. Laws ch. 127, § 152.

PUBLIC ASSISTANCE AND FOOD STAMPS

1. Are people with drug-felony convictions dated after 1996 eligible to receive TANF benefits and food stamps?

Yes, however individuals who are incarcerated for drug felonies are not eligible for TANF for 12 months following release, unless they receive an exemption or domestic violence waiver to shorten the time period. Exemptions are available to the following recipients: the disabled; those who must care for a disabled child or spouse; those who are in their third trimester of pregnancy, have children of record under two years of age, or any other child under three months old; caretakers of children to whom they have no legal obligation (provided, however, only the child will receive cash assistance); or those who are under twenty-one years of age and are attending high school full-time. There is no ban on food stamps. Mass. Regs. Code tit. 106, § 701.110(B)

PUBLIC HOUSING

1. Does the Housing Authority consider arrests that did not lead to conviction in its admission criteria?

No. Mass. Regs. Code tit. 803, § 5.03.

2. Does the Housing Authority make individual determinations about an applicant's eligibility based upon the

relevance of the criminal record?

Yes, the Housing Authority of Boston considers rehabilitation in determining whether to lift the bar for individuals with convictions threatening the public health, safety, or welfare.

3. How long is the conviction bar(s)?

No set time period exists.

VOTING**1. Does the state grant people with criminal records the right to vote?**

Individuals convicted of felony offenses may vote upon completion of the sentence and while on probation and parole.

Incarcerated individuals may not vote. Ma. Const., art. III.

BACK TO TOP

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